

VIRGINIA TECH SPECIAL TERMS AND CONDITIONS:

9/8/2023

- 1) **PERFORMANCE STANDARDS:** All work is to be performed in compliance with the most current versions of the Virginia Tech Construction and Professional Services Manual (“CPSM”) and the Virginia Tech Design and Construction Standards Manual (“DCSM”).

- 2) **ELECTRONIC TRANSACTIONS AND EXECUTION IN COUNTERPARTS:** To the fullest extent permitted by Code of Virginia, Title 59.1, Chapter 42.1, the parties agree that electronic records, signatures, systems, formats, transmissions and communications (collectively, Electronic Transactions) may be utilized for this Project and this Agreement and all related documents, records, submissions, approvals, and communications (Ancillary Agreements). The parties agree that electronic signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. The parties further agree that Electronic Transactions may be relied on for the purposes of binding information transfer for this Project. Unless otherwise agreed to in writing by the parties, the following shall be deemed an acceptable electronic signature for the purposes of this subsection: an electronic symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. In the event the laws, rules, or regulations of a third party governmental agency or entity do not permit the use of Electronic Transactions or Electronic Signatures, then this section shall not apply but only to the extent necessary to comply with the laws, rules, or regulations of the third party governmental agency or entity.

This Agreement, and any Ancillary Agreements, may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one and the same agreement. A signed copy of this Agreement, or any Ancillary Agreement, transmitted by any means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement or such Ancillary Agreement.

RIGHTS AND REMEDIES: Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

- 3) **SECTION 179D: ALLOCATION OF ENERGY EFFICIENT DESIGN TAX DEDUCTION - Applicable to all A/E Design RFPs/Contracts and all Design-Build RFPs/Contracts:** Virginia Tech prioritizes environmental responsibility and sustainability in planning, development and construction of our facilities on Virginia Tech’s campuses. These efforts, may be eligible for tax benefits under Section 179D of the Federal Tax Code, which allows a deduction based on the cost of certain qualifying, energy efficient property. Virginia Tech, in most cases, is unable to benefit directly from these deductions, however, Virginia Tech is permitted to allocate the deduction to parties responsible for the design of the qualifying property. Virginia Tech shall be reimbursed, by the applicant, for all costs incurred by Virginia Tech and its consultants to administer and support the application process.

An individual or entity who is contracted directly with Virginia Tech to design certain energy efficient buildings may apply to Virginia Tech for an allocation of Section 179D Deductions.

Refer to the link below for IRS guidelines and applicable updates regarding project eligibility, <https://www.gpo.gov/fdsys/pkg/USCODE-2010-title26/pdf/USCODE-2010-title26-subtitleA-chap1-subchapB-partVI-sec179D.pdf>

- 4) **UNIVERSAL DESIGN PRINCIPLES:** Universal Design principles, as identified in Virginia Tech's Design Team Assistance Checklist, shall be embraced in all aspects of the design. The A/E shall explore opportunities to apply Universal Design principles in the design and composition of project elements to allow for ease of access, use, and understanding, to the greatest extent possible, by all people regardless of their age, size, ability, or disability. Submittals should demonstrate a thorough understanding of Universal Design principles and strategies to incorporate these principles into the built environment. The A/E will be required to document related efforts at each stage of the design process by completing and submit the Universal Design A/E Guidance Checklist (attached hereto as **Exhibit 1**) to the Virginia Tech Project Manager.

- 5) **ALL-GENDER BATHROOMS:** All-gender restrooms shall be included in each new capital project and major renovations at Virginia Tech. Whenever possible, every floor shall have an All-gender restroom that complies with the 2010 ADA Standards for Accessible Design and is accessible to the general public. The All-gender restroom shall be located nearby the men's and women's multi-user restrooms whenever possible. Appropriate signage shall be displayed for the restroom as well as directional signage if it is not feasible for the restroom to be located near the main floor restrooms. Each All-gender restroom shall be designed as a single occupancy restroom with appropriate locking and closer mechanisms for the operation of the fully accessible door. The toilet, lavatory and all required accessories shall be compliant with the 2010 ADA Standards for Accessible Design.

- 6) **VEHICULAR ACCESS AND PARKING AREAS:** In addition to the Vehicular Access and Parking Area requirements listed in the most recent version of the Virginia Tech Design and Construction Standards, include the following:
 - a. **SIDEWALK PARKING:** Driving on sidewalks is allowed when there is no other way to get a needed vehicle to a designated place or building on campus. The vehicle operator shall be made aware that extreme caution shall be used to operate the vehicle in a way that will not be a hazard or hindrance to pedestrians using the walk. The Contractor shall be responsible for any damage to turf and anything that is located adjacent to the walk. Parking an unattended vehicle on a sidewalk is strictly prohibited by State Law. The Contractor is allowed to park a vehicle on a sidewalk if there is no other way to perform necessary work. The procedure to obtain a permit to operate a vehicle on sidewalks is the same as for the turf as outlined in Turf Policy. Any vehicle parked illegally on sidewalks shall be subject to ticketing, fines and towing if necessary.

 - b. **TURF PARKING:** Parking or driving on campus turf or sidewalk is strictly prohibited, except as specifically directed or otherwise allowed by the Physical Plant Grounds Department. In this case, a turf permit must be obtained from Virginia Tech Parking Services and displayed by the vehicle. Turf parking is not allowed under the canopy of any tree on campus. Any vehicle parked illegally on turf or sidewalks shall be subject to ticketing and fines.

- 7) **COMMONWEALTH OF VIRGINIA TRAVEL REGULATIONS:** The Commonwealth of Virginia Travel Regulations can be downloaded from the Commonwealth's Website at:

https://www.doa.virginia.gov/reference/CAPP/CAPP_Topics_Cardinal/20335-2015-Dec.pdf

- 8) **SCHEDULING SOFTWARE:** When required to develop a CPM schedule, the Contractor shall use Primavera P6 or a similar system as approved in writing by Virginia Tech. Electronic parent files (i.e. XER for Primavera) shall be provided to Virginia Tech upon request. Microsoft Project shall not be used for developing a CPM schedule.
- 9) **CONTRACTOR CHANGE ORDER EVALUATION BY PROJECT A/E:** During the construction administration phase of the project, the A/E shall evaluate all Contractor Change Order requests to confirm the entitlement of the change as well as assess the reasonableness of the costs and schedule impacts.
- 10) **A/E QUALITY ASSURANCE OF DELIVERABLES:** The A/E shall Conduct Quality Assurance of all documents delivered to Virginia Tech per the QA checklist (**Appendix Q**) of the CPSM.
- 11) **CMAR FEE – Applicable to all CM at Risk RFPs and Contracts:** The CMAR fee shall include all costs and expenses for registration and monthly fees associated with eVA, and GC Pay.
- 12) **CMAR COST OF WORK ADJUSTMENT - Applicable to all CM at Risk RFPs and Contracts:** Any “savings” in the actual Cost of the Work versus the Cost of the Work included in the approved GMP shall revert to Virginia Tech and the GMP shall be reduced accordingly by Change Order. If the actual cost exceeds the amount of the approved GMP, those costs shall be borne by the CM.
- 13) **COVID Guidance to Vendors and Contractors:** All contracted service providers (including contractors and their subcontractors) of Virginia Tech who provide services on site at one of Virginia Tech’s campuses or locations, university-owned or leased buildings, or active university construction sites must comply with the most recent COVID guidance and/or directives by Virginia Tech.
- 14) **WAGE THEFT and WORKER MISCLASSIFICATION –** Contractors and Subcontractors at any and all tiers shall ensure that wage theft and worker misclassification is prohibited.
- 15) **BUILDING INFORMATION MODEL ELECTRONIC FILES ACKNOWLEDGMENT:** At the request of Contractor, and approval of Virginia Tech, Contractor shall be provided, with electronic data/digital files (“Files”) for the project. The Files shall be provided to Contractor in their native format as a convenience to Contractor for coordination of the work and preparation of Contractor’s submittals such as shop drawings and coordination drawings. The Files referenced herein include any 3D models of the work. The Files will be shared by the AE with Contractor under the conditions of the Building Information Model Electronic Files Acknowledgement Agreement attached hereto as **Exhibit 2**.



EXHIBIT 1

Universal Design A/E Guidance Checklist

Principle 1: Equitable Use

The design is useful and marketable to people with diverse abilities.

- Provide the same means of use for all users: identical whenever possible; equivalent when not.
- Avoid segregating or stigmatizing any users.
- Provisions for privacy, security, and safety should be equally available to all users.
- Make the design appealing to all users

A/E Narrative Response

Principle 2: Flexibility in Use

The design accommodates a wide range of individual preferences and abilities.

- Accommodate right- or left-handed access and use.
- Facilitate the user's accuracy and precision.

A/E Narrative Response

Principle 3: Simple and Intuitive Use

Use of the design is easy to understand, regardless of the user's experience, knowledge, language skills, or current concentration level.

- Eliminate unnecessary complexity.
- Be consistent with user expectations and intuition.

A/E Narrative Response

Principle 4: Perceptible Information

The design communicates necessary information effectively to the user, regardless of ambient conditions or the user's sensory abilities.

- Maximize "legibility" of essential information.
- Differentiate elements in ways that can be described (i.e., make it easy to give instructions or directions).
- Provide compatibility with a variety of techniques or devices used by people with sensory limitations.

A/E Narrative Response

Principle 5: Tolerance for Error

The design minimizes hazards and the adverse consequences of accidental or unintended actions.

Arrange elements to minimize hazards and errors: most used elements, most accessible; hazardous elements eliminated, isolated, or shielded.

Provide fail safe features.

A/E Narrative Response

Principle 6: Low Physical Effort

The design can be used efficiently and comfortably and with a minimum of fatigue.

Specify furnishings which allow user to maintain a neutral body position.

Use reasonable operating forces.

Minimize sustained physical effort.

A/E Narrative Response

Principle 7: Size and Space for Approach and Use

Appropriate size and space is provided for approach, reach, manipulation, and use regardless of user's body size, posture, or mobility.

Provide a clear line of sight to important elements for any seated or standing user.

Make reach to all components comfortable for any seated or standing user.

Accommodate variations in hand and grip size.

Provide adequate space and infrastructure for the use of assistive devices or personal assistance.

A/E Narrative Response

**EXHIBIT 2
TO THE VIRGINIA TECH SPECIAL TERMS AND CONDITIONS**

Building Information Model Electronic Files Acknowledgement

**VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY
BUILDING INFORMATION MODEL ELECTRONIC FILES ACKNOWLEDGEMENT**

Owner: Virginia Polytechnic Institute and State University (“Virginia Tech”)
Architect/Engineer: **[Insert A/E Name]** (“A/E”)
Contractor: **[Insert Contractor Name]** (“Contractor”)
Project Name: **[Insert Project Name]** (“Project”)
Project Number: **[Insert Project Number]**

This Building Information Model Electronic Files Acknowledgement (“Acknowledgement”), made effective this **[day]** day of **[month, year]**, is to acknowledge and agree to the conditions of release by Owner (or A/E on Owner’s behalf) of the building information model in electronic file format (“Model Files”), and the receipt and/or use of the Model Files, by Contractor, as a convenience and at its sole risk, for Contractor’s coordination of the work and preparation of Project submittals, such as shop drawings and coordinated drawings.

Upon execution of this Acknowledgement, Virginia Tech authorizes A/E to provide Contractor with the Model Files for the Project. A/E shall provide the Model Files to Contractor in their native format.

The parties acknowledge and agree that:

1. A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Acknowledgment as a Model File, which may describe a model element, a single model or multiple models used in the aggregate. A model element is a portion of the Model Files representing a component, system or assembly.
2. The Model Files are Instruments of Service and are the exclusive and sole property of Virginia Tech including any copyright. Transmission of the Model Files conveys no ownership right in the Model Files;
3. The Model Files are not intended to be used for construction and are not Contract Documents under the terms of the A/E Contract or Contract for Construction;
4. The provision of the Model Files does not modify the terms of the respective contracts between Virginia Tech and the A/E or Virginia Tech and Contractor. Any use of, or reliance on, the Model Files by Contractor is at its own risk and without liability to Virginia Tech or the A/E. Acceptance, use, or reliance of the Model Files does not reduce nor modify Contractor’s or A/E’s contractual responsibilities for providing complete and coordinated services to Virginia Tech. Contractor further agrees to report any defects, deficiencies, errors or omissions, in the Model Files, discovered by Contractor or its subcontractors to A/E within ten (10) days of such discovery. It is understood and agreed that A/E will correct such defects, deficiencies, errors or omissions promptly and re-transmit the Model Files to Contractor.
5. Contractor shall be responsible for any costs of reviewing, updating or auditing of the Model Files and shall not request reimbursement from Virginia Tech resulting from Contractor’s use of the Model Files;
6. Contractor shall ensure each subcontractor, supplier or vendor, which accesses or uses the Model Files for coordination and/or submittal preparation, acknowledges and agrees to all obligations and responsibilities which the Contractor, under this Acknowledgement, assumes toward Owner and A/E;
7. Such Model Files shall have all indices of A/E removed from the Model Files.
8. Contractor shall establish protocols for the usage and sharing of the Model Files with its subcontractors, suppliers and vendors and shall have the following ongoing responsibilities:
 - a. Collecting incoming Model Files;

- b. Coordinating submission and exchange of Model Files;
 - c. Reviewing Model Files for consistency in accordance with Section 4 of this Acknowledgement;
 - d. Maintaining a record copy of each Model File received from the A/E and any subsequent revisions by Contractor or its subcontractors, suppliers and/or vendors;
 - e. Properly maintaining Model Files archives and backups to ensure preservation of the Model Files;
 - f. Managing Model File access rights to ensure controlled and secure access; and
 - g. Submitting Model Files to Virginia Tech, as requested by Virginia Tech, or upon completion of the Work.
9. **Electronic Transactions:** If this paragraph is initialed by both parties, to the fullest extent permitted by Code of Virginia, Title 59.1, Chapter 42.1, the parties do hereby expressly authorize and consent to the use of electronic signatures as an additional method of signing and/or initialing this Acknowledgement and agree electronic signatures (for example, the delivery of a PDF copy of the signature of either party via facsimile or electronic mail or signing electronically by utilizing an electronic signature service) are the same as manual executed handwritten signatures for the purposes of validity, enforceability and admissibility.

_____/_____
 (Initials) (Initials)

ACKNOWLEDGED AND AGREED TO ON THE DATE INDICATED ABOVE BY:

A/E

Contractor

By: [***Type name here***]
 Title: [***Type job title here***]

By: [***Type name here***]
 Title: [***Type job title here***]

Date: _____

Date: _____